82-1231



NO. _____

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1982

MOZELL AND DELORES BROOKS, ET AL.,
*Petitioners*

v.

WALKER COUNTY HOSPITAL DISTRICT, ET AL.,
*Respondents*

**On Writ Of Certiorari to the United States Court of Appeals for the Fifth Circuit**

## PETITION FOR WRIT OF CERTIORARI

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January ____, 1983

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## QUESTION PRESENTED

1. Is abstention on a federal due process claim proper when the existence of the entitlement which triggers the federal due process rights is uncontroverted but the details concerning the scope of the entitlement are unclear.*

* The parties to the proceeding in the United States Court of Appeals for the Fifth Circuit were Mozell Brooks, Delores Brooks, and Tee Massie, petitioners herein, and Walker County Hospital District, Wendall Baker, Amos Gates, T. C. Cole, MD, Robert Hardy, and C. Alvin John, MD, in their official capacities as members of the Board of Managers, respondents herein.

# TABLE OF CONTENTS



# TABLE OF AUTHORITIES

CASES

CASES



CONSTITUTIONAL AND STATUTORY PROVISIONS

NO. _____

IN THE

# Supreme Court of the United States

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MOZELL AND DELORES BROOKS, ET AL.,
*Petitioners*

v.

WALKER COUNTY HOSPITAL DISTRICT, ET AL.,
*Respondents*

**On Writ Of Certiorari to the United States Court of Appeals for the Fifth Circuit**

## PETITION FOR WRIT OF CERTIORARI

The petitioners, Mozell Brooks, Delores Brooks, and Tee Massie respectfully pray that a writ of certiorari issue to review the judgment and the opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on October 4, 1982, for which rehearing and rehearing *en banc* were denied on October 28, 1982.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is set out at 688 F.2d 334 (5th Cir. 1982) and is attached hereto as Appendix A. The unpublished order denying panel rehearing and rehearing *en banc* is attached hereto as Appendix B. The Memorandum and Order and the Final Judgment of the District Court are not reported and are attached hereto as Appendix C.

## JURISDICTION

The United States Court of Appeals for the Fifth Circuit entered its opinion on October 4, 1982. Panel rehearing and rehearing *en banc* were denied on October 28, 1982, and this petition for certiorari was filed within 90 days of that date. Jurisdiction is conferred on this Court by 28 U.S.C. § 1254(1) and Sup. Ct. R. 17.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution, the relevant provisions of the Civil Rights Act of 1871, 42 U.S.C. § 1983, and art. IX, § 9 of the Texas Constitution are set out verbatim in the attached Appendix D.

## STATEMENT OF THE CASE

The facts necessary to place the question in its setting can be briefly stated:

### A. Material Facts

The facts below are taken from the complaint because the case is before the Court following the granting of a

Rule 12(b)(6) motion to dismiss on abstention grounds which was affirmed by the appellate court.

Petitioners are indigent medically needy residents of the Walker County Hospital District who have been denied medical care, to which they are entitled under TEX. CONST. art. IX, § 9, without notice of the eligibility standards or procedures for obtaining care and without being given an opportunity to prove their entitlement to the benefits.

Respondent Hospital District was created, in part, to "assume full responsibility for providing medical and hospital care for its needy inhabitants," TEX. CONST. art. IX, § 9. The remaining respondents are members of the Board of Managers of Respondent Hospital District. All respondents acted under color of state law and all petitioners have suffered irreparable harm for which there is no adequate remedy at law.

**B. Course of Proceedings Below**

Petitioners filed their complaint on June 18, 1981. Respondent filed a motion to dismiss pursuant to Rule 12(b) of the Federal Rules of Civil Procedure on July 21, 1981, to which petitioners filed a timely response on August 18, 1981. The United States District Court for the Southern District of Texas, Honorable Robert O'Conor, Jr. presiding, dismissed the complaint without prejudice on *Pullman* abstention grounds. *See* Memorandum and Order and Final Judgment entered and filed on December 30, 1981, which are attached hereto as Appendix C. The United States Court of Appeals for the Fifth Circuit affirmed on October 4, 1982 (opinion attached as Appendix A), and denied panel rehearing and rehear-

ing *en banc* on October 28, 1982 (order attached as Appendix B).

### C. Basis of Federal Jurisdiction in Court Below

Jurisdiction was conferred on the District Court by 28 U.S.C. § 1343(3), which provides in relevant part for federal court jurisdiction in cases seeking to redress the deprivation under color of state law, of any right, privilege for immunity secured by the Constitution of the United States; and 28 U.S.C. § 1331, which provides federal courts with jurisdiction when a federal question is presented.

## ARGUMENT

### A. The Opinion of the Fifth Circuit in the Case at Bar is in Direct and Irreconcilable Conflict with the Opinion of the 8th Circuit in *Moe v. Brookings County*, 659 F.2d 880 (8th Cir. 1981).

*Brooks v. Walker County Hosp. Dist.*, 688 F.2d 334 (5th Cir. 1982), the case at bar, presented the Fifth Circuit with the issue of whether the federal courts should decide whether the failure to provide meaningful eligibility standards, notice, or an opportunity to be heard to all claimants of a state-created entitlement violates the fourteenth amendment.[1] The court accepted *arguendo* that

1. Art. IX, § 9 of the Texas Constitution reads, in pertinent part, as follows:

> The Legislature may by law provide for the creation, establishment, maintenance and operation of hospital districts composed of one or more counties or all or any part of one or more counties with power to issue bonds for the purchase, construction, acquisition, repair or renovation of buildings and improvements and equipping same, for hospital purposes; providing for the transfer to the hospital district of the title to any land, buildings,

TEX. CONST. art. IX, § 9 creates a constitutionally protected entitlement and that therefore federal constitutional issues must necessarily arise in the disposition of this case. *Id.* at 338. The Court nevertheless upheld abstention. The Eighth Circuit, faced with the identical legal issue, considered the same abstention doctrines, but reached the opposite result. *Moe v. Brookings County*, 659 F.2d 880 (8th Cir. 1981).[2]

The Fifth Circuit abstained because it found the scope of the entitlement unclear, while the Eighth Circuit refused to abstain over plaintiffs' federal due process claims because it found the existence of an entitlement and found it unnecessary to consider the scope of same.[3] The Eighth

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improvements and equipment located wholly within the district which may be jointly or separately owned by any city, town or county, ***providing that any district so created shall assume full responsibility for providing medical and hospital care for its needy inhabitants*** and assume the outstanding indebtedness incurred by cities, towns and counties for hospital purposes prior to the creation of the district, if same are located wholly within its boundaries, and a pro rata portion of such indebtedness based upon the then last approved tax assessment rolls of the included cities, towns, and counties if less than all the territory thereof is included within the district boundaries; . . . ." (Emphasis added)

2. Plaintiffs in *Moe*, like plaintiffs in the case at bar, were low-income persons challenging the absence of constitutionally guaranteed due process as potential beneficiaries of a state-created entitlement.

3. S.D. CODIFIED LAWS ANN. § 28-13-1 (Supp. 1980), under which plaintiffs in *Moe* sought benefits, provides as follows:

***County duty to relieve poor persons—Taxation—Determination of eligibility.*** Every county shall relieve and support all poor and indigent persons who have established residency therein, as that term is defined in §§ 28-13-2 to 28-13-16.2, inclusive, and who have made application to the county, whenever they shall stand in need. Each board of county commissioners may raise money by taxation for the support and employment of the poor. If a person is receiving benefits from the department of social services, the board of county commissioners may determine if he is eligible for county relief.

Circuit reasoned that the lack of standards (i.e., the uncertain scope of the clear entitlement) challenged in *Moe* is not a basis for abstention, but rather the partial source of plaintiffs' due process claim in the first place, while the Fifth Circuit relied on the uncertain scope of a clear entitlement as a basis for abstention.

The Fifth Circuit labeled the entitlement provision in question unclear while the Eighth Circuit labeled the entitlement provision in question clear. However, this apparent distinction between the two cases evaporates upon close scrutiny, because what the Fifth Circuit called unclear was the scope of what it assumed to be an entitlement, while the Eighth Circuit, after recognizing the existence of an entitlement, found it unnecessary to address the scope of same. The circuits, in reaching opposite results, faced two clear entitlements with the details of the scope of each unclear.

**B. The Decision of the Fifth Circuit in the Case at Bar is in Direct Conflict with *Baggett v. Bullitt*, 377 U.S. 360 (1964).**

In *Baggett, supra,* the Court reversed the lower court's abstention, held the challenged "loyalty oath" statute unconstitutionally vague, and stated:

> In these circumstances it is difficult to see how an abstract construction of the challenged terms, such as precept, example, allegiance, institutions, and the like, in a declaratory judgment action would eliminate the vagueness from these terms. It is fictional to believe that anything less than extensive adjudications, under the impact of a variety of factual situations, could bring the oath within the bounds of permissible constitutional certainty. Abstention does not require this. *Id.* at 378.

The Fifth Circuit pointed out numerous ambiguities concerning the details of the scope of the entitlement in the case at bar. Specifically, it noted that TEX. CONST. art. IX, § 9 does not resolve the questions of whether free or reduced-fee services are required; precisely what medical and hospital services are covered; and whether there is a distinction between emergency and non-emergency services. *Brooks v. Walker County Hosp. Dist., supra,* 688 F.2d at 336-37. The Fifth Circuit's abstention is in direct conflict with *Baggett, supra,* because resolution of the details set out above will require numerous state court interpretations.

**C. The Case at Bar is of Exceptional Importance because if the Distortion of the Abstention Doctrine it Created is Permitted to Stand the Federal Courts will be Stripped of their Traditional Role as the Primary Enforcer of Constitutional Guarantees.**

The narrow, judge-created *Pullman* abstention doctrine permits federal courts to defer decision in a narrow set of circumstances. This doctrine is rooted in *Railroad Commission of Texas v. Pullman Co.,* 312 U.S. 496 (1941), and allows the postponement of the exercise of federal jurisdiction in order to clarify ambiguous state law issues in the state courts when resolution of such issues might eliminate or substantially modify a federal constitutional question.

The Supreme Court has carefully confined application of the *Pullman* abstention doctrine to a very narrow range of cases, in recognition of the role of the federal courts as the primary guarantors of federal rights, *Zwickler v. Koota,* 389 U.S. 241, 247 (1967); *Harman v. Forssenius,*

380 U.S. 528, 535 (1965); *England v. Louisiana State Bd. of Medical Examiners,* 375 U.S. 411, 415-16 (1964), and in awareness of the lurking danger to the very foundations of federal court jurisdiction represented by galloping abstention:

> Congress could, of course, have routed all federal constitutional questions through the state court systems, saving to this Court the final say when it came to review of the state court judgments. But our First Congress resolved differently and created the federal court system and in time granted the federal courts various heads of jurisdiction, which today involve most federal constitutional rights.

*Wisconsin v. Constantineau,* 400 U.S. 433, 437-38 (1971).

Thus, this Court has frequently reiterated that abstention from the exercise of federal jurisdiction is the exception not the rule. E.g., *Colorado River Water Conservation Dist. v. United States,* 424 U.S. 800, 813 (1976); *Zwickler v. Koota,* 389 U.S. 241, 248 (1967). As this Court has succinctly stated:

> The doctrine of abstention, under which a District Court may decline to exercise or postpone the exercise of its jurisdiction, is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it.

*County of Allegheny v. Frank Mashuda Co.,* 360 U.S. 185, 188 (1959). "[B]ecause of the delays inherent in the abstention process and the danger that valuable federal rights might be lost in the absence of expeditious adjudication in the federal court, abstention must be invoked only in special circumstances, . . . and only upon

careful consideration of the facts of each case." *Harris County Comm'rs Court v. Moore*, 420 U.S. 77, 83 (1975) (interior quotations omitted).

This Court, after carefully examining the history of 42 U.S.C. § 1983, has noted that abstention is particularly inappropriate in cases brought under this statute. *See Mitchum v. Foster*, 407 U.S. 225, 238-43 (1972) ("Section 1983 opened the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation." *Id.* at 239); *McNeese v. Board of Eucation*, 373 U.S. 668, 671-72 (1963). *See also Procunier v. Martinez*, 416 U.S. 396, 404 (1974); *Zwickler v. Koota, supra*, 389 U.S. at 252; *Baggett v. Bullitt, supra*, 377 U.S. at 376-79.

The practical effect of permitting abstention in this 42 U.S.C. § 1983 case is closely akin to requiring plaintiffs to exhaust available state remedies before bringing a § 1983 action in federal court. Both exhaustion and abstention require the federal courts to stay their hand until the state machinery has had an opportunity to address the issue. This Court, recognizing the unique historical role of § 1983, has recently squarely held once again that the exhaustion of administrative remedies—let alone state court proceedings—can never be required of plaintiffs bringing actions under 42 U.S.C. § 1983. *Patsy v. Florida Board of Regents*, ____U.S.____, 102 S.Ct. 2557, 73 L.Ed.2d 172 (1982). Affirmance of abstention in the case at bar would permit that which can not be done under one label to be done under another, with devastating impact on the role of the federal courts in vindicating federal rights. Each of the anti-exhaustion

arguments the Supreme Court considered and accepted in *Patsy* applies with equal force to the abstention issue in the case at bar.

The Fifth Circuit created a heretofore unheard of doctrinal distortion by holding that abstention on a purely federal due process claim is proper even when the existence of a state entitlement triggering due process rights is conceded. The Fifth Circuit, in announcing the explosive expansion of *Pullman* abstention, ignored this Court's repeated holdings that federal courts are the primary interpreters of federal law; that the postponement of the exercise of properly invoked jurisdiction is an extraordinary and narrow exception to the general rule; and that abstention is particularly inappropriate in civil rights cases brought under 42 U.S.C. § 1983.

If permitted to stand, this grave doctrinal distortion will slam shut the federal courthouse doors to broad classes of plaintiffs who claim violations of their federal due process rights, simply because defendants raise as an affirmative defense the ambiguity of the details concerning the scope of the entitlement, even when same are not challenged by plaintiffs. This will strip the federal courts of their historic role as the principal arbiter of the United States Constitution in an infinite number of cases where heretofore federal jurisdiction has been unchallenged. Finally, and perhaps most ominously, the legitimation of abstention in situations such as the case at bar rewards the creation of the type of vague entitlements that are most likely to trigger the need for due process protections, while insulating the administration of those entitlements from federal court scrutiny pending state court review.

## CONCLUSION

Petitioners respectfully request that their Petition for Certiorari to the United States Court of Appeals for the Fifth Circuit be granted; and that the case be reversed and remanded to the Fifth Circuit United States Court of Appeals for further proceedings.

Respectfully submitted,

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January ____, 1983

# APPENDIX A

Mozell and Delores BROOKS, et al.,
Plaintiffs-Appellants,

v.

WALKER COUNTY HOSPITAL DISTRICT, et al.,
Defendants-Appellees.

No. 82-2044

Summary Calendar.

UNITED STATES COURT OF APPEALS
Fifth Circuit

Oct. 4, 1982.

Plaintiffs brought a civil rights action individually and on behalf of a proposed class of all other medically needy indigent residents of county hospital district against the district and its board of managers. Plaintiffs alleged that they were denied, without due process of law, entitlement to free medical services purportedly guaranteed them by the Texas Constitution. The United States District Court for the Southern District of Texas, at Houston, Robert O'Conor, Jr., J., dismissed the action, and plaintiffs appealed. The Court of Appeals, Randall, Circuit Judge, held that the District Court properly dismissed the action on the ground that it was a proper case for *Pullman* abstention.

Affirmed.

Jane K. Swanson, Conroe, Tex., Curtis B. Stuckey, Nacogdoches, Tex., for plaintiffs-appellants.

Joe B. Henderson, Jr., Huntsville, Tex., for defendants-appellees.

Appeal from the United States District Court for the Southern District of Texas.

Before CLARK, Chief Judge, RANDALL and JOHNSON, Circuit Judges.

RANDALL, Circuit Judge:

[1] Plaintiffs Mozell Brooks, Delores Brooks and Tee Massie[1] brought this 42 U.S.C. § 1983 action individually and on behalf of a proposed class of all other medically needy indigent residents of the Walker County Hospital District against the District and its Board of Managers. Plaintiffs alleged that they were denied without due process of law an entitlement to free medical services they claim is guaranteed them by Article IX, § 9 of the Texas Constitution.[2] The district court dismissed the action on the

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1. A fourth plaintiff in the original action, Edwina Bicknell, is now deceased.

2. Tex. Const. art. IX, § 9 provides in pertinent part:

The Legislature may by law provide for the creation, establishment, maintenance and operation of hospital districts composed of one or more counties or all or any part of one or more counties with power to issue bonds for the purchase, construction, acquisition, repair or renovation of buildings and improvements and equipping same, for hospital purposes; providing for the transfer to the hospital district of the title to any land, buildings, improvements and equipment located wholly within the district which may be jointly or separately owned by any city, town or county, *providing that any district so created shall assume full responsibility for providing medical and hospital care for its needy inhabitants* and assume the outstanding indebtedness incurred by cities, towns and counties for hospital purposes prior to the creation of the district, if same are located wholly within

grounds that this was a proper case for *Pullman* abstention.[3] We agree with the district court and therefore affirm.

As alleged in their pleadings, each of the plaintiffs is an indigent and medically needy resident of the Walker County Hospital District. Plaintiffs Mr. and Mrs. Brooks are physically unable to work due to medical problems. Mrs. Brooks suffers from diabetes and is in continuous need of insulin; she also suffers from heart problems, gall bladder problems, and other medical difficulties. Plaintiff Massie is unable to afford medicine which has been prescribed for him. Massie was previously hospitalized within the hospital district but was not informed of his right to free medical care. As a result he has at present over $600 in unpaid hospital and physicians' bills, some of which will not be covered by Medicare. Massie was informed by a hospital social worker that Massie's $200 hospital bill would not be written off as part of the hospital's indigent care obligation because it was a Medicare deductible amount.

As alleged in plaintiffs' complaint, defendants have failed and refused to institute any system whatsoever for providing or paying for necessary medical care other than hospital care. Defendants have also failed to institute orderly, consistent, and rational policies and procedures

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its boundaries, and a pro rata portion of such indebtedness based upon the then last approved tax assessment rolls of the included cities, towns and counties if less than all the territory thereof is included within the district boundaries; . . . ."
(Emphasis added).

3. Ordinarily a district court will retain jurisdiction over a case when it abstains in a *Pullman* situation. However, the idiosyncracies of Texas law prevent retention of federal jurisdiction and thus dismissal without prejudice was the proper disposition. *See generally Moore v. El Paso County*, 660 F.2d 586 (5th Cir. 1981).

for the provision of free hospital and medical care to the low income residents of the district, and to give proper and effective notice of the availability of such care.

[2] *Pullman* abstention is a judge-made doctrine which postpones the exercise of federal jurisdiction in order to clarify ambiguous state law issues in the state courts when resolution of such issues might eliminate or substantially modify a federal constitutional question. *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941). We believe that the district court properly exercised its discretion in ordering abstention in this case.[4] Plaintiffs present a claim for denial of a property right without due process of law. That property right is an entitlement to free medical services which plaintiffs claim is granted them by the Texas Constitution. There is of course no question here of an attack on state law as inconsistent with the Federal Constitution. But the scope and extent of the entitlement is essential to disposition of the plaintiffs' claims, and this fact makes abstention appropriate, as we now discuss.

4. Several panels of this circuit have held that an appellate court's standard of review of a district court's decision to invoke or refuse to invoke *Pullman* abstention is one of abuse of discretion. *Duncan v. Poythress*, 657 F.2d 691, 697 (5th Cir. 1981), and cases cited therein. Yet in our recent en banc decision in *O'Hair v. White*, 675 F.2d 680 (5th Cir. 1982), we made no explicit reference to our standard of review and engaged in a virtual *de novo* determination of the propriety of abstention as to each of the claims in that case. The Supreme Court's treatment of the question has been similarly ambiguous. *Compare Harman v. Forssenius*, 380 U.S. 528, 534, 537, 85 S.Ct. 1177, 1181, 1183, 14 L.Ed.2d 50 (1965) (district court did not abuse discretion in refusal to abstain), *with Harris County Commissioner's Court*, 420 U.S. 77, 95 S.Ct. 870, 43 L.Ed.2d 32 (no explicit discussion of standard of review). We need not resolve any inconsistency between these opinions (if indeed any exists) since we agree with the district court that abstention was proper and would reach the same result upon a *de novo* consideration of the issue.

We begin by noting that the ambiguity of state law required for invocation of *Pullman* abstention definitely exists in this case. We do not share plaintiffs' views about the clarity of the mandate of Article IX, § 9 of the Texas Constitution. The fact that hospital districts are established with "full responsibility for providing medical and hospital care to needy inhabitants" might be read to require free services, as plaintiffs contend, but it might also be read to require only that such services be provided at a reduced rate commensurate with the patient's ability to pay. *Cf. Ibarra v. Bexar County Hospital District,* 624 F.2d 44 (5th Cir. 1980) (describing hospital district's interpretation of Article IX, § 4); Tex. Rev. Civ. Stat. Ann. art. 4487 (Vernon 1976). Moreover, medical and hospital care covered in the entitlement may extend to some types of treatment and not others. It is possible that the Texas Constitution mandates responsibility to pay for Mrs. Brooks' insulin, for example, but not other medical services she seeks in her complaint. In addition, a distinction might rationally be made between emergency and non-emergency services. We express no opinion on how these questions should be resolved. We merely seek to point out that the bare language of Article IX, § 9 creates an entitlement of uncertain scope and extent.

[3] Plaintiffs have pointed to several opinions of the Attorney General of Texas which have discussed Article IX § 9, but we do not find these to clarify markedly the difficult issues presented here. No authoritative construction of the nature of the entitlement has emerged from the Texas courts.[5] Moreover, a full treatment of the scope

5. Plaintiffs cite *Monghon & Sisson v. Van Zandt County,* 3 Tex. Civ. Cas. 240 (Ct. App. 1886), which held that a county judge or any member of a county commissioners court could, by contract, bind the county in any reasonable sum necessary to support a pauper and

**of the entitlement created by state law must necessarily**

hence would be authorized to employ a physician to render necessary medical services to a pauper. This case relied upon a statutory duty of commissioners courts to provide for paupers and involved no construction of Article IX, § 9, which was not adopted until some seventy years later.

We received an *amicus curiae* brief from Dallas Association of Community Organizations for Reform Now citing a number of Texas cases and statutes which purportedly clarify the "interest" created by the State Constitution. *Amicus* cites *Willacy County v. Valley Baptist Hospital*, 29 S.W.2d 456 (Tex. Civ. App. 1930), as being interpretative of the obligation to furnish free medical services to needy residents. *Willacy*, however, seems to restrict rather than define the county's obligation and like *Monghon*, was decided long before the passage of the constitutional provision. The issue in the case was whether the county was obligated to reimburse *providers* of care for emergency medical service rendered county inhabitants. The court refused to hold counties liable as "a matter of course" for payment of hospital bills where the patient left no estate. The court noted further that "the obligations of the counties to paupers are fixed by statute and cannot be enlarged upon by unnecessary implication." 29 S.W.2d at 457.

None of the cases cited by *amicus* says that indigents are entitled to *free* medical care, as plaintiffs allege. Most have to do with the constitutionality of the enabling legislation of the specific hospitals. *Moore v. Edna Hospital District*, 449 S.W.2d 508 (Tex. Civ. App. 1970) (discussing the district's duty "of furnishing hospital care to the needy and of operating and maintaining the hospital itself"); *Veary v. Bond*, 384 S.W.2d 376 (Tex. Civ. App. 1964) (discussing the hospital administrator's power to determine ability to pay and to collect sums accordingly); *Bexar County Hospital District v. Crosby*, 320 S.W.2d 247 (Tex. Civ. App.), *aff'd in part, reversed in part*, 160 Tex. 116, 327 S.W.2d 445 (1959). Other cases involve the issue of the hospital's governmental immunity. *Ritch v. Tarrant County Hospital District*, 476 S.W.2d 950 (Tex. Civ. App.), *writ denied*, 480 S.W.2d 622 (Tex.), *cert. denied*, 409 U.S. 1079, 93 S.Ct. 703, 34 L.Ed.2d 669 (1972); *Arseneau v. Tarrant County Hospital District*, 408 S.W.2d 802 (Tex. Civ. App. 1966). Similarly the statutes cited by *amicus* provide for the establishment of hospitals and hospital procedures, *e.g.*, Tex. Rev. Civ. Stat. Ann. art. 4493 (Vernon 1976); Tex. Rev. Civ. Stat. Ann. art. 4487 (Vernon 1976); Tex. Rev. Civ. Stat. Ann. art. 4494n § 1 (Vernon 1976), but none defines the nature of care to be provided. We are still left without an authoritative opinion from either the state courts or state legislature determining who is "needy" or what constitutes "full responsibility for medical and hospital care."

consider the effects of enabling legislation for hospital districts, as well as any regulatory framework established for administration of the districts. "[W]here the challenged statute is part of an integrated scheme of related constitutional provisions, statutes, and regulations, and where the scheme as a whole calls for clarifying interpretation by the state courts," the Supreme Court has regularly required abstention. *Harris County Commissioners Court v. Moore*, 420 U.S. 77, 84-85 n.8, 95 S.Ct. 870, 875-876 n.8, 43 L.Ed.2d 32 (1977); (citing *Reetz v. Bozanich*, 397 U.S. 82, 90 S.Ct. 788, 25 L.Ed.2d 68 (1970); *Meridian v. Southern Bell Tel. & Tel. Co.*, 358 U.S. 639, 79 S.Ct. 455, 3 L.Ed.2d 562 (1959)).

[4] Plaintiffs argue that even if the scope of the entitlement is unclear, the federal constitutional question of denial of due process cannot be avoided no matter how the entitlement is construed. Of course it is possible that no entitlement to completely free medical services might exist at all based on the State's construction of its constitution. But let us accept *arguendo* that some form of entitlement to some form of medical care must exist under any reasonable construction of the constitution and related statutory and regulatory provisions. To the extent that the plaintiffs' claim is that they were denied notice and a hearing on their ability to qualify for free (or less expensive) medical care (regardless of whether they would, after a hearing, be found to qualify for such care), their argument has some force. Yet it is an axiom of due process jurisprudence that the type of process which is due turns upon the nature of the entitlement and an analysis of the governmental and private interests affected. *E.g., Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976); *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972); *Goldberg*

*v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970). Thus, even given the fact that federal constitutional issues must necessarily arise in the disposition of this case, we think clarification of the nature of the entitlement may have a considerable impact on the posture and ultimate resolution of those federal issues. It is well settled that *Pullman* abstention may be appropriate in such cases in addition to those cases where the federal claims may be thoroughly mooted through a narrowing construction of state law. *E.g., Palmer v. Jackson*, 617 F.2d 424 (5th Cir. 1980).

Plaintiffs insist nevertheless that abstention is frowned upon in § 1983 cases, and that abstention in this case will work an undue hardship on them. We are not unsympathetic to either of these arguments. However, we think that on balance, strong policy reasons militate in favor of abstention. We deal here with a quesiton of considerable local importance. It is an issue which may have a significant financial impact on the State of Texas as well as on its indigent inhabitants, and it is an issue touching upon a sensitive area of state policy. The fact that it also involves construction of the State's own constitution merely enhances its local importance. *Harris County Commissioner's Court, supra; Reetz, supra.* The better course, we think, is to allow the Texas courts the first opportunity to address the difficult questions of state health care law and policy raised by plaintiffs' suit. *Cf. Ibarra, supra* (abstention proper in § 1983 case to determine if under state constitution county hospital districts must treat indigent aliens and legal residents alike with respect to nonemergency medical services). The judgment of the district court is affirmed.

**AFFIRMED.**

## APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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NO. 82-2044

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MOZELL and DELORES BROOKS, ET AL.,
Plaintiffs-Appellants,

versus

WALKER COUNTY HOSPITAL DISTRICT, ET AL.,
Defendants-Appellees.

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Appeal from the United States District Court for the
Southern District of Texas

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ON PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING EN BANC

(Opinion 10/4/82, 5 Cir., 198__, ____F.2d____).

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(October 28, 1982)

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(Filed October 28, 1982)

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Before CLARK, Chief Judge, RANDALL and JOHNSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16) the Suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ CAROLYN DINEEN RANDALL
United States Circuit Judge

## APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. H-81-1571

MOZELL AND DELORES BROOKS, ET AL

v.

WALKER COUNTY HOSPITAL DISTRICT, ET AL

(Filed December 30, 1981)

MEMORANDUM AND ORDER

Various plaintiffs in this cause of action have sued the Walker County Hospital District and the district Board of Managers in their official capacity. It is alleged in their complaint that defendants acting under color of state law deprived plaintiffs of medical care mandated by state law without due process of law in violation of 42 U.S.C. § 1983 and the Fourteenth Amendment to the Constitution of the United States. Plaintiffs seek compensatory damages, as well as declaratory and injunctive relief. Before the court is Defendants' Motion to Dismiss or in the Alternative For a More Definite Statement.

Plaintiffs base their action on Article IX, Section 9 of the Texas Constitution which provides in pertinent part:

> Sec. 9. The Legislature may by law provide for the creation, establishment, maintenance and operation of hospital districts . . . with power to issue bonds

> for the purchase, construction, acquisition, repair or renovation of buildings and improvements and equipping same for hospital purposes; . . . *providing that any districts created shall assume full responsibility for providing medical and hospital care for its needy inhabitants.* . . .

(emphasis added). The Texas Legislature subsequently passed enabling legislation and the Walker County Hospital District was established.

Plaintiffs assert that the constitutional language of Article IX, Section 9 creates an entitlement to free medical care in all needy residents of Walker County. Plaintiffs have attacked the policies and procedures used by the district to provide such care to its low income residents as violative of constitutional due process. Moreover, Plaintiffs have alleged that Walker County does not provide the full scope of free health services to the indigent required by the state constitution. Put succinctly, Plaintiffs allege a federal cause of action based on the due process clause of the Fourteenth Amendment and a pendent state cause of action based on Article IX, Section 9 of the Texas Constitution. This Court finds such a case to be a proper one in which to exercise the doctrine of abstention.

Where state law is unclear and construction of that law could obviate the need to decide a federal constitutional issue, a federal court may decline to exercise its jurisdiction. *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941). This doctrine is particularly applicable where the "nub of the whole controversy may be the state constitution." *Reetz v. Bozanich*, 397 U.S. 82, 87 (1970). Texas courts have not spoken on the state constitutional language at issue in this case and the

scope or even the existence of an "entitlement" *vel non* to free medical care is unclear from the face of Article IX, Section 9. Moreover, the Texas Legislature has enacted broad legislation concerning the establishment, operation and duties of hospital districts in the state. *See* Tex. Rev. Civ. Stat. Ann. art. 4478-4494s (Vernon 1976 & Supp. 1980-81). The meaning of the Texas state constitution and its relationship to state statutes is appropriately left to the courts of the state of Texas, *See Harris County Commissioners Court v. Moore*, 420 U.S. 77, 84 (1975), and allowing those courts an opportunity to hear the state law claim in this case would avoid needless friction between federal pronouncements and state policy. *Pullman, supra,* at 500.

Finding abstention proper in this case, it is unnecessary to consider Defendants' other grounds for dismissal. It is therefore

ORDERED, ADJUDGED, and DECREED that Defendants' Motion to Dismiss is hereby GRANTED and Plaintiff's Cause of Action is hereby DISMISSED without prejudice.

Signed this 30th day of December, 1981.

/s/ ROBERT O'CONOR, JR.
Robert O'Conor, Jr.
United States District Judge

## CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the Record Excerpts to Joe B. Henderson, Jr., Smither, Martin, Haggar & Henderson, Attorney for Defendants, 1107 University Avenue, Huntsville, Texas 77340 on this the 24th day of February, 1982.

/s/ CURTIS B. STUCKEY
Curtis B. Stuckey

C-5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. H-81-1571

MOZELL AND DELORES BROOKS, ET AL,

v.

WALKER COUNTY HOSPITAL DISTRICT, ET AL.

(Filed Dec. 30, 1981)

FINAL JUDGMENT

For the reasons set forth in this Court's Memorandum and Order of even date, it is

ORDERED, ADJUDGED, and DECREED that Defendants' Motion to Dismiss is hereby GRANTED and Plaintiff's Cause of Action is hereby DISMISSED without prejudice.

Signed this 30th day of December, 1981.

/s/ ROBERT O'CONOR, JR.
Robert O'Conor, Jr.
United States District Judge

# APPENDIX D

## CONSTITUTIONAL AND STATUTORY PROVISIONS

The due process clause of the fourteenth amendment to the United States Constitution, U.S. CONST. amend. XIV, § 1, provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 1983 of the Civil Rights Act of 1871, as amended, 42 U.S.C. § 1983 (1976 and Supp. IV 1980), provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

TEX. CONST. art. IX, § 9, provides, in relevant part:

> Sec. 9. The Legislature may by law provide for the creation, establishment, maintenance and operation of hospital districts composed of one or more counties or all or any part of one or more counties with power to issue bonds for the purchase, construction, acquisition, repair or renovation of buildings and improvements and equipping same, for hospital purposes; providing for the transfer to the hospital district of the title to any land, buildings, improvements and equipment located wholly within the district which may be jointly or separately owned by any city, town or county, providing that any district so created shall assume full responsibility for providing medical and hospital care for its needy inhabitants and assume the outstanding indebtedness incurred by cities, towns and counties for hospital purposes prior to the creation of the district, if same are located wholly within its boundaries, and a pro rata portion of such indebtedness based upon the then last approved tax assessment rolls of the included cities, towns and counties if less than all the territory thereof is included within the district boundaries; providing that after its creation no other municipality or political subdivision shall have the power to levy taxes or issue bonds or other obligations for hospital purposes or for providing medical care within the boundaries of the district; providing for the levy of annual taxes at a rate not to exceed seventy-five cents (75¢) on the One Hundred Dollar valuation of all taxable property within such district for the purpose of meeting the requirements of the district's bonds, the indebtedness assumed by it and its maintenance and operating expenses, providing that such district shall not be created or such tax authorized unless approved by a majority of the qualified property taxpaying electors therof voting

at an election called for the purpose; and providing further that the support and maintenance of the district's hospital system shall never become a charge against or obligation of the State of Texas nor shall any direct appropriation be made by the Legislature for the construction, maintenance or improvement of any of the facilities of such district.

NO. 82-1231

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1982

MOZELL AND DELORES BROOKS, ET AL,
*Petitioners,*

v.

WALKER COUNTY HOSPITAL DISTRICT,
ET AL,
*Respondents*

**On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

## RESPONDENTS' BRIEF IN OPPOSITION

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## QUESTION PRESENTED

1. Whether the District Court correctly exercised its discretion in invoking the *Pullman* abstention doctrine in that the applicable Texas constitutional provision at the nub of the controversy does not expressly create an entitlement and is both unclear and unconstrued.

# SUBJECT INDEX



# LIST OF AUTHORITIES

## CASES



## UNITED STATES CONSTITUTION



## TEXAS CONSTITUTION

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v.

WALKER COUNTY HOSPITAL DISTRICT, ET AL,
*Respondents*

**On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

## RESPONDENTS' BRIEF IN OPPOSITION

The Respondents, WALKER COUNTY HOSPITAL DISTRICT, ET AL, respectfully pray that Petitioners' Writ of Certiorari to review the judgment and the opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on October 4, 1982, for which rehearing and rehearing en banc were denied on October 28, 1982, be denied.

## ARGUMENT

### A. The Opinion of the Fifth Circuit Court in the Case at Bar and the Opinion of the Eighth Circuit Court in *Moe v. Brookings County*, 659 F.2d 880 (8th Cir. 1981) are not in conflict.

The case at bar and *Moe v. Brookings County*, supra, are significantly distinguishable. The *Moe* case involves a very detailed state statutory scheme for benefits for poor persons. The case at bar centers on a broadly written unconstrued state constitutional provision relating to a state political subdivision's assumption of responsibility and powers upon its creation.

The doctrine of abstention as applied in *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941) and its progeny require a federal court to refrain from exercising jurisdiction when the case involves a potentially controlling issue of state law that is unclear, and the decision of this issue by the state courts could avoid or materially alter the need for a decision on federal constitutional grounds.

In *Moe*, the Eighth Circuit Court found that the state law in question was not unclear, nor was it farily susceptible of an interpretation that would avoid the need for a decision on constitutional grounds. *Id.* at 883.

In the case at bar, the appellate court affirmed the trial court's findings (and exercise of *Pullman* discretion) in determining that the applicable state constitutional provision was ambiguous. *Brooks v. Walker County Hospital District*, 688 F.2d 334.

As Petitioner points out in Petitioner's brief, the two courts clearly made different findings in the two cases

with respect to the existence of an entitlement (at p. 6, Petition for Writ of Certiorari). The Fifth Circuit Court in the instant case was unable to conclude that any clear cut entitlement in favor of Petitioners was created by virtue of the unclear state constitutional provision. The Court did assume "arguendo" that Tex. Const., Art. IX, § 9 created some constitutionally protected entitlement of uncertain scope and extent and nevertheless found abstention proper. However, the Eighth Circuit in *Moe* apparently found that an entitlement program was clearly created by the statutory scheme and that the lack of standards in the scheme gave rise to a federal constitutional claim.

Petitioners have construed the constitutional language at issue and its enabling legislation as conferring directly upon them an unlimited right "to free medical services." The nature, scope, level and manner of providing medical services is nowhere addressed in the broad constitutional language. Petitioners cite no state directives by statute or court decisions expanding, interpreting, or otherwise implementing this provision.

This Court recognizes many fundamental rights and has protected them with "due process" protection. The Court has never recognized any kind of fundamental right to "free medical care" as requested by Petitioners who are seeking here due process for entitlements that clearly do not exist.

No "protected property right" exists by virtue of state law here. A property interest in a benefit arises only when a person has a legitimate claim of entitlement to the benefit. *Board of Regents v. Roth*, 408 U.S. 564 (1972). Were the benefits contemplated here by the constitution

more clearly defined by statute and any regulations implementing them, a "claim of entitlement" may arise. Here, as in *Roth*, there are no statutory or administrative standards defining the interest i.e., "free medical services" or their scope or nature.

Before the Fourteenth Amendment protection arises, the interest for which protection is sought must be determined to rise to the level of a legitimate claim of entitlement. *Memphis Light & Gas Co. v. Craft*, 436 U.S. 1 (1978). Appellants here have not "legitimate claims of entitlement" but only "mere expectations". In *Griffith v. Detrich*, 603 F.2d 118 (9th Cir. 1979), 445 U.S. 970 (1980), the Ninth Circuit Court held that a claim of entitlement arose when a state statute governing benefits was coupled with implementing regulations in such a way that an individual could have more than a unilateral expectation of receiving benefits. In finding a legitimate claim of entitlement in *Griffith*, the Ninth Circuit Court held that the authorizing statute along with the implementing regulations created protectable property rights.

Even if the constitutional language created something more than a mere expectation, as the Fifth Circuit Court noted in their holding in the case at bar, abstention would be proper. The court citing among others, *Mathews v. Eldridge*, 424 U.S. 319 (1976), noted that "it is an axiom of due process jurisprudence that the type of process which is due turns upon the nature of the entitlement and an analysis of the governmental and private interests affected." *Brooks v. Walker County Hospital District*, supra, 688 F.2d at 334.

Petitioners misread the holding of the Fifth Circuit Court in reciting that the Court labeled the entitlement

provision unclear. The two courts reached an opposite result not because they found two clear entitlements with the details of scope each unclear, but because they reached different decisions as to whether or not any entitlement clearly existed.

**B. The Decision of the Fifth Circuit in this Case at Bar is not in Direct Conflict with *Baggett v. Bullitt*, 377 U.S. 360 (1964) or any other Decision of this Court.**

*Baggett*, supra, correctly applied the *Pullman* abstention to an unconstitutionally vague loyalty oath statute. The Court refused to abstain automatically because of alleged vagueness in that the statute could not reasonably be construed in such a manner to avoid or fundamentally alter the constitutional issue. This Court concluded that any reasonable construction of the statute in question invaded constitutionally protected activity.

In applying *Pullman*, the Court in *Baggett* first noted that:

> The abstention doctrine is not an automatic rule applied whenever a federal court is faced with a doubtful issue of state law; it rather involves a discretionary exercise of a court's equity powers. Id at 375.

Citing *Propper v. Clark*, 377 U.S. 472, the Court went on to note that the determination as to whether the special circumstances exist to apply these equity powers must be on a case-by-case basis. The Court simply found here that the special circumstances did not exist. The Court here noted that the uncertain issue of state law was vague,

and as such, open to a number of interpretations and that there was no question that the oath applied to the activities of the parties to the suit. The Court's decision turned on whether the challenged statute's resolution in a particular manner would eliminate the constitutional issue.

The rule of *Baggett* then is that abstention is not automatically required if a vagueness claim is urged, but that inquiry must be made as to whether or not the uninterpreted vague statute is fairly subject to an interpretation which will avoid or modify the federal question. In the instant case, the unclear constitutional provision is capable of determination by Texas courts which will moot the federal constitutional claim.

### C. The Holding of the Fifth Circuit does not Distort the Abstention Doctrine.

The doctrine of abstention as applied in *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), is based upon "the avoidance of needless friction" between federal pronouncements and state policies. In *Pullman*, the Supreme Court held that when a federal constitutional claim is premised on an unsettled question of state law, the federal court should stay its hand in order to provide the state courts an opportunity to settle the underlying state law question and thus avoid unnecessarily deciding a constitutional question.

Though a narrowly applied doctrine, abstention is applied at times where unclear and unconstrued state statutes are critical to the merits of a § 1983 action. *Devlin v. Sosbe*, 465 F.2d 169 (1972). The doctrine is particularly applicable where the "nub of the whole controversy is in the interpretation of the state constitution." *Reetz v. Bozanich*, 397 U.S. 82 at 87 (1970).

In reaffirming the language of *City of Meridian v. Southern Bell Tel. & Tel. Co.*, 358 U.S. 639 (1959), this Court in *Reetz v. Bozanich*, 397 U.S. 82 (1970) at 89, stated that:

> Proper exercise of federal jurisdiction requires that controversies involving unsettled questions of state law be decided by state tribunals preliminary to a federal court's consideration of the underlying federal constitutional questions. . . . Here, the state law problems are delicate ones, the resolution of which is not without substantial difficulty, certainly for a federal court. . . . In such a case, when the state court's interpretation of the statute . . . may obviate any need to consider it . . . the federal court should hold its hand lest it render a constitutional decision unnecessarily. (interior quotations omitted)

The interpretation of the Texas state constitution is and its relationship to the enabling statutes is most appropriately left to the courts of the state. *Harris County Commissioners Court v. Moore*, 420 U.S. 77 (1975). In reaffirming *Reetz v. Bozanich*, supra, the Supreme Court in *Harris County Commissioners Court*, supra, 420 U.S. 77 (1975) the Court noted:

> Among the cases that call most insistently for abstention are those in which the federal constitutional challenge turns on state statute, the meaning of which is unclear under state law. If state courts would be likely to construe the statute in a fashion that would avoid the need for federal constitutional ruling or otherwise significantly modify the federal claim, the argument for abstention is strong. Id at 85.

The wisdom and *Pullman* equity of having a state court interpretation would especially seem the better course when Petitioners were not attacking the constitutionality of a provision, but trying to fall within its coverage as they are in the case at bar. Unlike many of the *Pullman* progeny, there is no constitutional attack on a statute here. The Petitioners are seeking to enforce rights claimed under a state constitutional provision. The State is not a hostile party as the State is not being challenged. If federal courts can abstain in cases where the state is challenged, it seems that the equity of abstention would be even more appropriate when the complaint is one of enforcement of rights claimed pursuant to an alleged state constitutional entitlement.

As was noted in the leading case of *Huffman v. Pursue Ltd.*, 420 U.S. 592 (1975) at 603:

> The seriousness of federal judicial interference with state civil functions has long been recognized by this Court. We have consistently required that when courts are confronted with requests for relief, they should abide by standards of restraint that go well beyond those of private equity jurisprudence.

In expanding *Huffman*, the Court in *Moore v. Sims*, 442 U.S. 415 (1979) notes that "state courts are the principal expositors of state law". *Sims* involved the delicate area of family relations, a traditional area of state concern. Respondents assert that the situation in the case at bar is not unlike *Sims* in that the area of concern here (health care of indigents) is traditionally a matter of state concern, and therefor, most appropriate for state adjudication.

## CONCLUSION

Respondents respectfully request that the Petition for Certiorari to the United States Court of Appeals for the Fifth Circuit be denied; and that the judgment below be affirmed.

Respectfully submitted,

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May _____, 1983